IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Rajendra Kumar & Another Vs. State of Raj.
(D.B. Criminal Appeal No.321/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 17-1-2003 in Sessions Case No.141/2002 passed by Shri Jainendra Kumar Jain, RHJS, Additional Sessions Judge (Fast Track) Chhabra.

Date of Judgment: July 18, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. Arvind Kumar Gupta] for the appellants.
Mr. Vaibhav Gehlot]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Rajendra Kumar and Mohan Lal, appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) Chhabra District Baran, who vide judgment dated January 17, 2003 convicted Rajendra Kumar under section 302 and Mohan Lal under section 302/34 and sentenced each of them to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer two years rigorous imprisonment.

2. It is the prosecution case that on July 25, 2000 at 11.00 AM at General Hospital Atru informant Narendra Kumar (Pw.8) handed over a written report (Ex.P-7) to Kalyan Prasad, ASI Police Station Atru stating therein that on the said day around 10 AM while his uncle Nand Kishore

was working in the field, as many as 15 persons of village Harnavda including the appellants entered into the field with cattle and started damaging crop of Soyabin. When Nand Kishore protested he was given beating with lathis. On that report a case under sections 307, 323, 147, 148, 149, 447 and 427 IPC was registered and investigation commenced. In the course of investigation Nand Kishore succumbed to the injuries and Section 302 IPC was added. Autopsy on the dead body got performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed only against appellants. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Chhabra District Baran. Charge under section 302/34 IPC was framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 20 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in support of their defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record.

4. Injuries sustained by Nand Kishore were examined vide Injury Report (Ex.P-9) which reads thus:-

> 1. Swelling with hematoma 4" x 2½" on the left left tempo parietal region
> 2. Bruise with abrasion 2" x ½" on the right palm.

Dr. Ashok Mundra (Pw.20), who conducted autopsy on the

dead body opined in the Post Mortem Report (Ex.P-19) that the cause of death was coma as a result of head injury.

5. The prosecution case is founded on the testimony of Ghisi Bai (Pw.6) and Kamlesh (Pw.18). Ghisi Bai (Pw.6) in her deposition stated that on the day of incident around 10 AM when she and Ram Kanya had gone to field she found Nand Kishore lying unconscious under Babool tree. At that time she had seen Rajendra and Mohan Lal running. Kamlesh (Pw.18) deposed that 13-14 persons entered into the field of Nand Kishore with cattle and Raju inflicted blows with lathi on the temple of Nand Kishore as a result of which he fell down. Thereafter Mohan Lal gave 2-3 blows with lathi on the person of Nand Kishore.

6. Dr.Jai Prakash Yadav (Pw.12) who examined the injuries received by Nand Kishore deposed that there were two injuries on the person of Nand Kishore, one on his left tempo parietal region and the other on his right palm.

7. On a close scrutiny of the testimony of eye witnesses we find it consistent qua the appellant Rajendra Kumar only. So far as allegations against appellant Mohan Lal are concerned the prosecution has failed to establish the participation of Mohan Lal in the assault on the deceased. Testimony of Kamlesh that after Raju inflicted one blow on the left temple of Nand Kishore, Mohan Lal gave 2-3 blows, could not be relied upon since it does not get corroboration from the medical evidence. The prosecution is not able to prove that the appellants shared common intention to kill Nand Kishore. In these circumstances, we find ourselves unable to fasten vicarious criminal liability on appellant Mohan Lal. The prosecution although appears

to have withheld the origin and genesis of the occurrence, we infer from the evidence adduced at the trial that the incident occurred all of sudden and on a spur of moment. Since appellant Rajendra Kumar inflicted only one blow with lathi on the person of the deceased and did not repeat it, it can be presumed that appellant Rajendra Kumar had knowledge that the blow inflicted by him was likely to cause death of Nand Kishore, even though he had no intention of causing death or such bodily injury as is likely to cause death. Therefore the appellant Rajendra Kumar is found guilty for the offence punishable under Part II of Section 304 IPC.

8. For the reasons aforementioned, we dispose of instant matter in the following terms:-

(i) We allow the appeal of appellant Mohan Lal and acquit him of the charge under section 302/34 IPC. Appellant Mohan Lal is on bail, he need not surrender and his bail bonds stand discharged.

(ii) We partly allow the appeal of appellant Rajendra Kumar and instead of section 302 we convict him under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period more than six years the ends of justice would be served in sentencing him to the period already undergone by him in confinement. Appellant Rajendra Kumar, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(iii) The impugned judgment of trial court stands modified as indicated above.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

arn/